Gannett Co., Inc. *and* American Federation of Television and Radio Artists, Local No. 225, AFL–CIO. Case 21–CA–32086

February 20, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND WALSH

On November 19, 1998, Administrative Law Judge Joan Wieder issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Gannett Co., Inc., San Diego, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

"(b) Pay the employees represented by the Union in units A and B their normal wages when in the Respondent's employ on December 9, 1996 from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the sale or other transfer of its assets and operations at Radio Station KSDO; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from December 9, 1996, to the date the Respondent shall have offered to bargain; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages on December 9, 1996, with interest, as set forth in the remedy portion of this decision."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain with the American Federation of Television and Radio Artists, Local 225, AFL-CIO, concerning the effects upon our employees represented by the this Union of our decision to sell Radio Station KSDO, in San Diego, California.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union as the exclusive bargaining representative of all staff announcers, newspersons, freelance performers, producers, writers, directors, editors, and call screeners employed at KSDO on December 9, 1996, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay the employees represented by the Union in units A and B their normal wages when in the Respondent's employ on December 9, 1996, from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Re-

[1] Member Hurtgen agrees that Respondent was obligated to give notice to the Union upon the FCC's approval of the sale on December 9. Respondent's failure to do so was unlawful. Member Hurtgen recognizes that the implementation occurred promptly after the FCC approval. Thus, even if notice had been given, there would have been little time for "effects" bargaining prior to implementation. However, Member Hurtgen also notes that: (1) the Union could have sought bargaining, or at least information, when its Executive Director read the news item on September 26; (2) although "effects" bargaining is generally more effective prior to implementation, there is no necessity that such bargaining be completed by the time of implementation.

[2] We will modify the order to provide that the Union is required to request desired bargaining within 5 days after "receipt" of this Decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union. See *Melody Toyota*, 325 NLRB 846 (1998).

spondent bargains to agreement with the Union on those subjects pertaining to the effects of the sale or other transfer of its assets and operations at Radio Station KSDO; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 15 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from December 9, 1996, to the date the Respondent shall have offered to bargain; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of the normal wages on December 9, 1996, with interest, as set forth in the remedy portion of this decision.

GANNETT CO., INC.

John Kloosterman, Esq., for the Acting General Counsel.
Joyce T. Bailey, Esq., of Arlington, Virginia, for the Respondent.
Thomas W. Doyle, of San Diego, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge**.** This case was tried on a stipulated record based on a motion filed July 31, 1998,[1] by all parties reflecting their agreement exhibits attached to the motion constitute the entire record. The American Federation of Television and Radio Artists, Local 225, AFL–CIO (the Union or Charging Party) filed the charge, on June 9, against Gannett Co., Inc. (Respondent). The Regional Director for Region 20, issued a complaint and notice of hearing on January 22, 1998, which was amended July 1, 1998, alleging Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). In general, the complaint asserts Respondent sold a radio station without appropriate prior notice to the Union and without affording the Union an opportunity to bargain about the effects on this decision on the represented employees.

Respondent's timely filed answer to the complaint, admits certain allegations, denies others, and denies any wrongdoing. Specifically Respondent denies it failed to inform the Union and denies the matter relates to wages, hours and other terms and conditions of employment. Respondent admits timely service of the charge, the complaint, and, the amendment to the complaint. For the reasons stated hereinafter, Respondent's motion to dismiss the complaint should be and is denied.

All parties were given full opportunity to appear and introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs.

[1] All dates are in 1996 unless otherwise indicated.

Based upon the entire record, and having considered the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Based on Respondent's answer to the complaint and the Parties stipulations, I find Gannett meets one of the Board's jurisdictional standards and the Union is a statutory labor organization.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Background

Respondent, at all relevant times, is a national news and information company with headquarters in Arlington, Virginia. Prior to December 9, 1996, Respondent owned radio station KSDO (radio station or KSDO) in San Diego, California. Susan Hoffman has been the vice president/general manager of the radio station and an admitted agent of Respondent. Gary DeFrancesco has been the president of Gannett Radio and is an admitted agent.

The Charging Party has been the collective-bargaining representative of a unit of staff announcers, newspersons, and freelance performers at the radio station since at least 1959, (unit A). Pursuant to an election on or about October 26, 1989, the Union was certified as the collective-bargaining representative of additional radio station employees including; producers, writers, directors, editors and call screeners (unit B). Respondent admits the Union is the collective-bargaining representative of both units A and B since about October 26, 1989.

The collective-bargaining agreement covering unit A expired January 31, 1988. Pursuant to an impasse, on or about April 26, 1988, Respondent implemented the terms and conditions of employment contained in its last, best and final offer. The Parties agreed these terms and conditions of employment are to be read in conjunction with the collective-bargaining agreement for unit A. unit A members, since about April 26, 1988, have worked under these terms and conditions, with the exception of some unit employees who have entered into personal services contracts with Respondent, with the Union's consent, which governs some of these excepted employees terms and conditions of employment. Respondent and the Union engaged in negotiations for a collective-bargaining agreement covering unit B employees between early 1991 and March 1994. Respondent and the Union failed to reach an agreement and unit B employees' terms and conditions of employment have been governed by Respondent's employee handbook and by past practice since about October 26, 1989.

On about September 26, 1996, Respondent entered into an agreement to acquire WTSP-TV, the CBS television outlet in Tampa Florida, from Jacor Communications, Inc. (Jacor), in exchange for certain radio stations, including KSDO. On or about the same day, Respondent issued a news release. As pertinent, the new release provided:

> Gannett Co., Inc. had entered into an agreement to acquire WTSP-TV, the CBS affiliate in Tampa, from Jacor Communications, Inc., in exchange for KIIS AM/FM, Los Angeles, KSDO-AM/KKBH-FM, San Diego and WDAR-

AM/WUSA-FM, Tampa . . . The transaction is subject to FCC approval.[2]

Also on September 26, 1996, the announcement was reported by national wire services, including the Dow Jones News and Reuters, who indicated Jacor agreed to swap its Tampa station for six of Respondent's radio stations, including KSDO. About the same date, Thomas W. Daily, the Union's executive director, read about the transaction in the San Diego Union-Tribune, a major daily newspaper.[3] The newspaper story contained the information provided in the news release, including, as a condition precedent to the sale, the Federal Communications Commission (FCC) had to approve the transaction.

Between September 26 and December 9, 1996, KSDO employees learned the station was going to transferred from Respondent to Jacor if the FCC permitted. The FCC approved the transaction on December 9, 1996. On the same day, Respondent transferred ownership of KSDO to Jacor. Also on December 9, by letters on Gannett letterhead, Respondent informed its KSDO employees it had transferred ownership of the station to Jacor effective that date. The letters were signed by DeFrancesco.

Respondent did not directly communicate verbally or in writing, with the Union prior or subsequent to December 9, to notify the Union about the sale of KSDO to Jacor. The Union did not request to bargain with Respondent over the effects of the sale before or after December 9, 1996. Respondent continued to make health and pension contributions to the Union trust funds for the employees in unit A through the end of December 1996. Respondent was never required to make health and pension contributions to the Union trust funds for the employees in unit B.

Analysis and Conclusions

1. Positions of the parties

The decision to sell KSDO is not a mandatory subject of bargaining under Section 8(a)(5) of the Act. However, as Respondent admits, the law requires an employer provide an opportunity to the Union to bargain over the effects of its sale of KSDO on employees in the bargaining unit, citing *Transmarine Navigation Corp.*, 380 F.2d 933, 939 (1967); *NLRB v. Rapid Bindery, Inc.*, 293 F.2d 170, 176 (1961); *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Respondent also concedes inherent in this obligation is an opportunity for the Union to bargain in a meaningful manner and at a meaningful time. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681 (1981). Respondent claims it complied with the notice requirement when Doyle read the newspaper article in September. Respondent argues that once the Union learned of the proposed sale the Union then has the burden to timely request bargaining. *Ventura County Star-Free Press*, 279 NLRB 412, 420 (1986). According to Respondent, the Union's failure to request bargaining about the effects of the announced sale constitutes a waiver by inaction. *Associated Milk Producers*, 300 NLRB 561, 563 (1990);[4] *WPIX, Inc.*, 299 NLRB 525, 526–527 (1990); *NLRB v. C&C Plywood*, 585 U.S. 421, 430–31 (1967); *Crystal Springs Sheet Corp.*, 637 F.2d 399, 402 (5th Cir. 1981).

Respondent further declares special circumstances existed which privileged its action under *Metropolitan Teletronics*, 279 NLRB 957 fn. 14 (1986), enfd. mem. 819 F.2d 1130 (2d Cir. 1987); *Williamette Tug & Barge Co.*, 300 NLRB 282 (1990). The Union's failure to request bargaining about the effects of the sale for more than two months "is precisely the kind of case that the Board should interpret as warranting an exception to the general rule" requiring preimplementation notice to satisfy Respondent's obligation to bargain over the effects of the sale. Moreover, Respondent argues, it should not be subject to the *Transmarine Navigation*, remedy because Respondent issued the press release which led to the Union acquiring knowledge of the proposed sale more than 2 months prior to the effective date of the sale.

The General Counsel argues Respondent had an obligation to bargain about the effects of its sale decision. *First National Maintenance v. NLRB*, 452 U.S. at 681–682. If the Union is given timely notice of the decision, then the Union must request bargaining about the effects of the decision. *Jim Walters Resources*, 289 NLRB 1441 (1988). Presenting the Union with a fait accompli is not timely notice. *Penntech Papers v. NLRB*, 706 F.2d 18, 26 (1st Cir. 1983); *Los Angeles Soap Co.*, 300 NLRB 289 (1990).

Respondent did not have to incorporate in its sales agreement the condition precedent of FCC approval. *Compact Video Services*, 319 NLRB 131, 141 fn. 69 (1995). The General Counsel argues, timely notice of the sale is after the condition precedent of FCC approval had been met for to request and require bargaining at an earlier date would be pointless. The notice obligation was triggered by the FCC's approval of the transaction. *Willamette Tug & Barge Co.*, supra; *Oklahoma Fixture Co.*, 314 NLRB 958 (1994) (The Board determined the obligation to give notice of the proposal to the union was triggered when the timing and circumstances of the action were clear, not when the announcement was "inchoate and imprecise").

2. Conclusions

It is undisputed Respondent was obligated to bargain over the effects of the sale of KSDO. In this case, the question is whether the Union received appropriate and timely notice. Section 8(a)(5) and (d) of the Act requires employers to bargain with its employees' appropriate representatives in good faith regarding "wages, hours and other terms and conditions of employment." *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958); *Fiberboard Corp. v. NLRB,* 379 U.S. 203 (1964). The employer is also required to notify and consult with the union about such changes prior to implementing such changes. *NLRB v. Katz*, 369 U.S. 736 (1962). The prior notice must afford the union a reasonable opportunity to evaluate the proposals and present counter proposals before implementing such change.

[2] Approval by the Federal Communications Commission was a condition precedent to effecting the transaction.

[3] The Parties could not find a copy of this newspaper article but Thomas Doyle, the Union's executive director, admitted he read the article sometime in late September 1996.

[4] In *Associated Milk Producers*, the employer specifically gave the union timely notice of the proposed change in terms and conditions of employment. For the reasons discussed here, I find Respondent has not met these obligations.

Sunrise Nursing Home, 325 NLRB 380 (1998); *M & M Contractors*, 262 NLRB 1472 (1982). I find the Union did not receive adequate and timely notice. The notice, to be timely, must be given sufficiently in advance of the proposed change to permit the union a reasonable opportunity to bargain. *Ladies Garment Workers (McLaughlin Mfg. Corp.) v. NLRB*, 463 F.2d 907 (D.C. Cir. 1972); *Medicenter Mid-South Hospital*, 221 NLRB 670 (1975). Informing a union of a fait accompli does not constitute timely notice. *NLRB v. R. H. Belo Corp.*, 411 F.2d 959 (5th Cir. 1969); cert. denied 396 U.S. 1007 (1970).

In those instances where a union receives timely notice of an employer's proposal to change a term and condition of employment, the union must promptly request bargaining about the matter. *Haddon Craftsmen*, 300 NLRB 789 (1990); *Jim Walter Resources*, 289 NLRB 1441 (1988). Where the notice is given shortly prior to implementation of the change because of a lack of intent to alter its position, then the notice is merely informational about a fait accompli and fails to satisfy the requirements of the Act. *Ciba-Geigy Pharmaceutical Division*, 264 NLRB 1013 (1982).

As the Board held in *Willamette Tug & Barge Co.*, supra at 282–283:

> The sale of a business does not depend just on the seller's desire to sell. The sale of a business to a purchaser necessarily requires the purchaser's assent to the terms of the sale before the sale actually takes place. Even after the purchaser and seller agree on the terms, significant contingencies may remain. These may include the purchaser's obtaining financing and nonroutine governmental clearances and approvals. Until these contingencies are satisfied, the seller may not be able to say with any degree of assurance that the sale will go through.
>
> . . . .
>
> Although we agree with the Respondent that the decision to sell did not occur until the execution of a binding agreement to sell, we find a violation in the Respondent's failure to provide any meaningful prior notice to the Union that it was ceasing business and terminating employees. If a seller and a purchaser can be expected to negotiate about, and draft their agreement to provide for satisfaction of, various contingencies such as governmental clearances, so, too, should they be able to account for the human factor—the employees' interest in having their designated representative notified and given an adequate opportunity to bargain about the effects of the sale. That circumstances may compel confidentiality in arriving at a sales agreement does not obviate the employer's duty to give pre-implementation notice to the union to allow time for effects-bargaining[3] provision for which may be negotiated in the sales agreement.[4] We do not presume here to advise corporate negotiators how to accommodate the right of a union to negotiate the effect of the sale on the employees it represents. We merely decide that, barring particularly unusual or emergency circumstances, the union's right to discuss with the employer how the impact of the sale on the employees can be ameliorated must be reckoned with (as must compliance with other governmental requirements) sufficiently before its actual implementation so that the union is not confronted at the bargaining table with a fait accompli. Thus, the Union here was entitled [to] as much notice of the closing and termination of employees as was needed for meaningful bargaining at a meaningful time. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681–682 (1981); *Metropolitan Teletronics*, 279 NLRB 957, 959 fn. 14 (1986), enfd. mem. 819 F.2d 1130 (2nd Cir. 1987) [footnote omitted].

[3] For the purposes of the above analysis, the term "implementation" refers to the actual physical consequences of the sales decision, i.e., the termination of the enterprise and the employees.

[4] Nothing in this discussion should be read to preclude an employer from being able to fulfill its effect-bargaining obligations in advance of sale, either by negotiating appropriate provisions in a collective-bargaining agreement or by specific negotiations prior to such a sale.

While in the instant case Respondent did not argue the decision to sell did not occur until the execution of a binding agreement, the reasoning in the *Willamette Tug & Barge Co.* decision still obtains. The agreement to sell, according to the stipulations, did not become binding until after the FCC approved the proposal.

The stipulations are silent concerning the possibility of the FCC imposing terms and conditions on the sale different than those contained in the agreement. There is a possibility the FCC could have required alterations in the sales agreement, which would have altered the concerns of the Union and the Union's bargaining posture. The sales agreement was not introduced into evidence. There is no predicate to conclude the condition precedent did not have to be met to create a binding sales agreement. Thus, there is no basis to find the Respondent and Union could have engaged in meaningful and knowledgeable effects bargaining prior to the FCC's approval of the sale based solely on the press release. Thus, there is no predicate to find the notice of the proposed sale in the news media was sufficient notice at a meaningful time with sufficient information to engage in meaningful negotiations. Id.

There is no claim an emergency or other unusual circumstances required implementation of the sales agreement the same day Respondent and the buyer received FCC approval of the sale. Respondent argues the news release constituted a special circumstance. I find this argument unpersuasive. Respondent admits the issuance of a press release announcing the proposed sale "would not in and of itself satisfy the notice obligation." There is no claim the news release presented any of the details of the sale other than the condition precedent of FCC approval.

While Respondent claims the news release gave notice the sale was imminent, I find the record does not support this claim. There was no stipulation concerning how long FCC approval takes in similar circumstances. The record indicates it took the FCC more than two months to grant approval. There is no showing if such approval modified the terms of the sales agreement. There is no evidence the Union should have known the sale could or did result in the termination of unit employees. There is no evidence Respondent gave the Union meaningful information at a time when the Union retained any bargaining power. There was no evidence an emergency or other exculpa-

tory circumstances required effecting the sale the same day the FCC gave its approval. *Genesee Family Restaurant*, 322 NLRB 219 (1996). I conclude Respondent failed to meet its burden of demonstrating "particularly unusual or emergency circumstances" that would relieve it of the obligation to provide the Union with effective notice. *Willamette Tug & Barge Co.*, supra; *Compact Video Services*, 319 NLRB 131 fn. 1 (1995).

Respondent has failed to present persuasive argument supporting its claim the press release presents "the kind of case that the Board should interpret as warranting an exception to the general rule." Respondent has failed to demonstrate such an exception is warranted under the circumstances of this case, where there was no emergency or other factors warranting relieving Respondent of its obligation to give the Union meaningful notice at a meaningful time. The Union was presented with a fait accompli. Once the terms of the sales agreement had been met, i.e., FCC approval received, the sale was immediately implemented without any opportunity afforded the Union to determine if it wished to request effects bargaining. There is no showing the Union had sufficient information to engage in a reasonable analysis of the proposed sale and determine whether to request effects bargaining. Under the circumstances presented in this case, I find the union did not waive the right to bargain about the effects of the sale of Respondent. The Board will not lightly infer waivers of statutory rights. In *Rockwell International Corp.*, 260 NLRB 1346, 1347 fn. 6 (1982), the Board stated:

> Where, as here, an employer relies on a purported waiver to establish it freedom unilaterally to change terms and conditions of employment not contained in the contract, the matter at issue must have been fully discussed and consciously explored during negotiations and the union must have consciously yielded or clearly and unmistakably waived its interest in the matter.

I find the Union did not waive its statutory right to bargain about the effects of the sale of KSDO. Accordingly, I conclude Respondent violated Section 8(a)(5) and (1) of the Act by selling it operation without giving the Union adequate notice and an opportunity to bargain over the effects of its sale of the business.

CONCLUSIONS OF LAW

1. Respondent, Gannett Co., Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. American Federation of Television and Radio Artists, Local 225, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in units A and B composed of all staff announcers, newspersons, freelance performers, producers, writers, directors, editors, and call screeners employed at KSDO.

4. On or about December 9, 1996, Respondent failed to timely notify and bargain with the Union about the effects of the sale of its radio station KSDO, thereby engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

Since Respondent has no appropriate local place of business to post a notice to employees of KSDO regarding violations and remedy, I recommend that Respondent be ordered to mail signed copies of the notice to the Union and to all of Respondent's employees represented by the Union and employed as of December 9, 1996. *Benchmark Industries*, 269 NLRB 1096, 1099 (1984); *Excel Container, Inc.*, 325 NLRB 17 (1997).

General Counsel requests, as the appropriate remedy, that provided for in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), for the Union may have been able to secure "additional benefits for employees had the Respondent engaged in timely effects bargaining," such as severance pay, pension fund payments, letters of reference, and health insurance. *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990); *Los Angeles Soap,* supra, 300 NLRB at 295. Respondent avers its press release, which gave the Union knowledge of the pending sale, should absolve Respondent of liability and the *Transmarine Navigation* remedy would be inappropriate.

Where, as here, the sale occurred years ago "the Union can hardly hope to obtain the same benefits from bargaining that might have helped ease the unit employees' transition into their employment with their new employer or new employment had 'effects' bargaining taken place at the time required by law." *Signal Communications*, 284 NLRB 423, 428 (1987); *Live Oak Skilled Care & Manor,* supra at 1042. The Respondent had a duty to bargain over such matters as severance pay, payment of accrued benefits, continuation of health benefits for employees not re-employed by the new employer, etc. Respondent's failure to do so requires that employees be made whole for losses incurred by such failure. *Sierra International Truck, Inc.*, 319 NLRB 948 (1995).

Meaningful bargaining cannot be guaranteed unless some measure of economic equipoise is granted to the Union. Given the facts of this case, I find the *Transmarine* backpay remedy is appropriate, and to require "the employees whose statutory rights were invaded by reason of the Respondent's unlawful . . . action, and who may have suffered losses in consequence thereof, be reimbursed for such losses until such time as the Respondent remedies its violation by doing what it should have done in the first place." *Royal Plating & Polishing Co.*, 160 NLRB 990, 999 (1966), quoting *Winn-Dixie Stores*, 147 NLRB 788, 792 (1964), enfd. in relevant part 361 F.2d 512 (5th Cir. 1966).

It is recommended that, in order to effectuate the purposes of the Act, Respondent bargain with the Union concerning the effects on its employees of the sale of Radio Station KSDO in San Diego, California, and shall order a limited backpay requirement designed both to make the employees whole for losses suffered as a result of the violation of the Act and to recreate some practical economic balance to the bargaining so

such bargaining is not devoid of any economic consequence for Respondent. Backpay shall be paid at the rate earned by units A and B employees on the last date of their employment with Gannett, with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I recommend leaving the determination of losses suffered by employees to the compliance stage of this proceeding.

Respondent shall pay employees represented by the Union backpay at the rate of their normal wages when last in Respondent's employ, from 5 days after the date of the Board's Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the sale and loss of employment upon its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Board's Order, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the backpay of any of the employees represented by the Union exceed the amount he or she would have earned as wages from December 9, 1996, the date of the sale and/or the date of termination of Union represented employees, to the time the employee secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall the backpay sum be less than these employees would have earned for a 2-week period at the normal rate of their normal wages when last in Respondent's employ. Backpay shall be paid at the rate earned by units A and B employees on the last date of their employment with Gannett, with interest as set forth in *New Horizons for the Retarded*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Gannett Co., Inc., San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to timely notify and bargain with the American Federation of Television and Radio Artists, Local 225, AFL–CIO, as the exclusive representative of its employees for the Units composed of all staff announcers, newspersons, freelance performers, producers, writers, directors, editors, and call screeners employed at KSDO.

(b) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the American Federation of Television and Radio Artists, Local 225, AFL–CIO, concerning the effects of its decision to sell or otherwise transfer its assets and operations at Radio Station KSDO and to terminate the employees, and if any understanding is reached, embody it in a signed agreement.

(b) Pay the terminated employees represented by the American Federation of Television and Radio Artists, Local 225, AFL–CIO, their normal wages for the period set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail an exact copy of the attached notice marked "Appendix"[6] to the Union and to all union-represented employees at Radio Station KSDO employed on December 9, 1996, to those employees' last known addresses. Copies of the notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's duly authorized representative, shall be mailed immediately upon receipt thereof, as herein directed.

(e) Within 21 days after service by the Regional Director, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

[5] If no exceptions are filed as provided by Sec. 102.48 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States Court of Appeals, the works in the notice reading "Posted by Order of the National Labor Relations Board" shall read: Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."